

Decision 04-10-032 October 28, 2004

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the
Commission's Own Motion to Determine
Whether Baseline Allowances for Residential
Usage of Gas and Electricity Should Be Revised.

Rulemaking 01-05-047
(Filed May 24, 2001)

**OPINION GRANTING INTERVENOR COMPENSATION
TO LATINO ISSUES FORUM FOR SUBSTANTIAL
CONTRIBUTION TO DECISIONS 03-01-037 AND 04-02-057**

This decision awards the Latino Issues Forum \$165,324.00 in
compensation for its contribution to Decisions (D.) 03-01-037 and 04-02-057.

Background

The Commission opened Rulemaking (R.) 01-05-074 to consider steps to make it easier for residential customers to afford their basic energy needs in light of the substantial rate increases and the multi-tiered rate structure implemented to meet utility obligations caused by the energy crisis. Phase 1 of this rulemaking addressed: 1) updating the energy usage data used by the Commission in calculating baseline quantities; 2) the appropriate percentage of energy usage to use in calculating baseline quantities (within the range specified by Pub. Util. Code § 739(d)(1)); and 3) possible changes to the medical baseline allowance. Suggestions for legislative changes originally were raised in the scoping memo but subsequently were deferred to Phase 2.

D.02-04-026, the Phase 1 decision, increased the natural gas and electric baseline allowances for many residential customers and began the process of improving the medical baseline program. In D.02-04-026 we noted that several parties raised issues in Phase 1 testimony that fell outside the scope of Phase 1, including consideration of factors such as family size in calculating baseline allowances and seasonal usage. We deferred those issues to Phase 2.

Phase 2 evaluated the affordability of basic energy needs for customers who might be vulnerable for reasons other than being low income. Specifically, Phase 2 considered household characteristics (including household/home size and demographics), climate zones and geographic boundaries of each utility's baseline zones, well water pumping for household use, condominium and other multiple dwelling unit common areas, seasonal residence effects on average use calculations (including the application of baseline to vacation homes), definition of seasons, rate impacts of changes to baseline, and proposed legislative changes for many of these issues. In D.03-01-037, an interim Phase 2 decision, the Commission approved the modified settlement permitting Pacific Gas and Electric Company's (PG&E) residential common area electric accounts, currently served on residential rate schedules, the option to be served on commercial rate schedules. D.04-02-057 adopted the program proposed by The Utility Reform Network (TURN) for residential customers of three major utilities, PG&E, Southern California Edison Company (SCE), and San Diego Gas & Electric Company (SDG&E), whereby lower-middle income large household participants

will be charged Tier 2 electricity rates for their Tier 3 usage.¹ We did not extend that program to customers of the smaller electric utilities, since their upper tier rates were not as high and they did not appear to have a comparable need for rate relief. That decision also adopted a policy to exclude certain seasonal usage. This rulemaking now is closed except for resolution of requests for intervenor compensation.

Requirements for Awards of Compensation

The intervenor compensation program, enacted by the Legislature in Pub. Util. Code §§ 1801-1812, requires California jurisdictional utilities to pay the reasonable costs of an intervenor's participation if the intervenor makes a substantial contribution to the Commission's proceedings. The statute provides that the utility may adjust its rates to collect the amount awarded from its ratepayers. (Subsequent statutory references are to the Public Utilities Code unless otherwise indicated.)

All of the following procedures and criteria must be satisfied for an intervenor to obtain a compensation award:

1. The intervenor must satisfy certain procedural requirements including the filing of a sufficient notice of intent (NOI) to claim compensation within 30 days of the prehearing conference (or in special circumstances, at other appropriate times that we specify). (§ 1804(a).)
2. The intervenor must be a customer or a participant representing consumers, customers, or subscribers of a utility subject to our jurisdiction. (§ 1802(b).)

¹ Lower-middle income households with income levels between 175% and 250% of the federal poverty threshold, e.g., \$32,500 to \$46,500 for a household of four, are just above the California Alternative Rates for Energy (CARE) limits.

3. The intervenor should file and serve a request for a compensation award within 60 days of our final order or decision in a hearing or proceeding. (§ 1804(c).)
4. The intervenor must demonstrate “significant financial hardship.” (§§ 1802(g), 1804(b)(1).)

5. The intervenor's presentation must have made a "substantial contribution" to the proceeding, through the adoption, in whole or in part, of the intervenor's contention or recommendations by a Commission order or decision. (§§ 1802(h), 1803(a).)
6. The claimed fees and costs are comparable to the market rates paid to experts and advocates having comparable training and experience and offering similar services. (§ 1806.)

For discussion here, the procedural issues in Items 1-4 above are combined, followed by separate discussions on Items 5-6.

Procedural Issues

The prehearing conference in this matter was held on June 21, 2001. Latino Issues Forum filed its NOI on July 25, 2001, two days late.² On March 7, 2002, Administrative Law Judge (ALJ) Thomas issued a ruling excusing Latino Issues Forum's untimely filing and finding Latino Issues Forum to be a customer under the Public Utilities Code. Latino Issues Forum filed its request for compensation on April 30, 2004 within the required 60 days of D.04-02-057 being issued.³ On June 1, 2004, Mountain Utilities filed a response to Latino Issues Forum's request to seek exemption from responsibility for compensation awarded to Latino Issues Forum.

Latino Issues Forum deferred establishing financial hardship until its request for compensation. However, as ALJ Thomas noted in her March 7, 2002

² Latino Issues Forum and Greenlining Institute jointly filed the NOI. Greenlining Institute did not file a request for compensation.

³ Latino Issues Forum did not separately request compensation for its contribution to the interim Phase II opinion, D.03-01-037, but included in its request time spent on the issue addressed in that decision.

ruling, a determination of Latino Issues Forum's financial hardship occurred within one year of the initiation of this proceeding, thereby establishing a rebuttable presumption of financial hardship. D.02-07-030 found Latino Issues Forum met the significant financial hardship condition.

Latino Issues Forum has satisfied all the procedural requirements necessary to make its request for compensation.

Substantial Contribution

In evaluating whether a customer made a substantial contribution to a proceeding we look at several things. First, did the ALJ or Commission adopt one or more of the factual or legal contentions, or specific policy or procedural recommendations put forward by the customer? (See §1802(h).) Second, if the customer's contentions or recommendations paralleled those of another party, did the customer's participation materially supplement, complement, or contribute to the presentation of the other party or to the development of a fuller record that assisted the Commission in making its decision? (See §§ 1802(h) and 1802.5.) As described in §1802(h), the assessment of whether the customer made a substantial contribution requires the exercise of judgment.

In assessing whether the customer meets this standard, the Commission typically reviews the record, composed in part of pleadings of the customer and, in litigated matters, the hearing transcripts, and compares it to the findings, conclusions, and orders in the decision to which the customer asserts it contributed. It is then a matter of judgment as to whether the customer's presentation substantially assisted the Commission.⁴

⁴ D.98-04-059, 79 CPUC2d, 628 at 653.

Even where the Commission does not adopt any of the customer's recommendations, compensation may be awarded if, in the judgment of the Commission, the customer's participation substantially contributed to the decision or order. For example, if a customer provided a unique perspective that enriched the Commission's deliberations and the record, the Commission could find that the customer made a substantial contribution. With this guidance in mind, we turn to the claimed contributions Latino Issues Forum made to the proceeding.

Latino Issues Forum participated in all phases of the proceeding, from filing a prehearing conference statement, briefs and other pleadings to participating in full discovery and in the evidentiary hearings. Latino Issues Forum states it made a substantial contribution to D.04-02-057 in six areas. First, Latino Issues Forum presented testimony that low-moderate income large households face disproportionately large energy bills, because they greatly exceed baseline allowances even when they try their utmost to conserve. Second, Latino Issues Forum presented evidence that low-moderate income large households were more energy efficient than the average household and large affluent households. Third, Latino Issues Forum's briefs argued in favor of our authority to change the baseline system to address its disproportionate impact on certain customers. Fourth, Latino Issues Forum advanced its own proposal on baseline allowances but also supported TURN's proposal, which we ultimately adopted. Fifth, Latino Issues Forum supported the cost-effectiveness of implementing changes in the baseline structure and of community outreach for the new baseline proposals. Sixth, Latino Issues Forum alone opposed the stipulation on common area accounts, conducted discovery on whether all classes of ratepayers would benefit from the settlement, and ultimately

concurred that the settlement would benefit customers across all socio-economic levels.

While we did not adopt Latino Issues Forum's specific proposal to increase baseline usage for large low-moderate income households, we find that Latino Issues forum made a substantial contribution in the six areas mentioned in the request for compensation. We relied on Latino Issues Forum's showing that low-moderate income large households face a high energy burden even while conserving, agreed with Latino Issues Forum that incentives for conservation should focus on higher usage levels more likely to be discretionary, relied on Latino Issues Forum's legal argument that consideration of demographic factors was not statutorily proscribed, adopted TURN's proposal, relied on Latino Issues Forum's showing concerning the feasibility of outreach and implementation for baseline relief, and Latino Issues Forum assisted in our determination of whether the common area settlement was in the public interest.

The Commission has awarded full compensation even where the intervenor's positions were not adopted in full, especially in proceedings with a broad scope. (*See* D.98-04-028, 79 CPUC2d 570, 573-574.) Here, Latino Issues Forum achieved a high level of success in demonstrating the merits of the issues it raised. Although we did not adopt Latino Issues Forum's specific proposal, we benefited from Latino Issues Forum's analysis and discussion of all of the issues that it raised.

Latino Issues Forum made a substantial contribution as described above. After we have determined the scope of a customer's substantial contribution, we then look at whether the compensation requested is reasonable.

Reasonableness of Requested Compensation

Latino Issues Forum requests \$166,255⁵ for its participation in this proceeding, as follows:

Advocate	Year	Rate	Hours	Total
Susan Brown	2001	\$380.00	26.5	\$ 10,070.00
Brown	2002	\$380.00	281.5	\$106,970.00
Brown	2003	\$380.00	2.0	\$ 760.00
Brown	2004	\$390.00	7.0	\$ 2,730.00
Enrique Gallardo	2001	\$245.00	31.5	\$ 7,717.50
Gallardo	2002	\$255.00	110.5	\$ 28,177.50
Gallardo	2003	\$265.00	5.0	\$ 1,325.00
Gallardo	2004	\$275.00	7.5	\$ 2,062.50
Viola Gonzales	2002	\$310.00	13.5	\$ 4,185.00
Other Costs				\$ 2,259.00
Total				\$166,256.50

Latino Issues Forum waives 50 hours spent by Brown on equity issues during Phase I of the proceeding and 97.9 hours spent by its law clerks.

The components of this request must constitute reasonable fees and costs of the customer's preparation for and participation in a proceeding that resulted in a substantial contribution. Thus, only those fees and costs associated with the customer's work that the Commission concludes made a substantial contribution are reasonable and eligible for compensation.

⁵ Latino Issues Forum rounded several entries to arrive at the \$166,255 figure. Our calculations show that the total requested is \$166,256.50 as reflected in the table.

To assist us in determining the reasonableness of the requested compensation, D.98-04-059 directed customers to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. The costs of a customer's participation should bear a reasonable relationship to the benefits realized through their participation. This showing assists us in determining the overall reasonableness of the request.

Latino Issues Forum focused on demonstrating in this proceeding that large low-moderate income households suffered a disproportionate energy burden due to the baseline allocation procedure. Latino Issues Forum does not precisely quantify the benefit realized by easing the high energy burden on large households. Although the rate relief afforded to large low-moderate income households is not quantified, we agree that affected ratepayers will avoid certain electric costs by applying a lower rate to a certain level of usage. We also realize the additional societal benefit of rewarding the conservation efforts of large low-moderate income households by not penalizing them for household size.

Next, we must assess whether the hours claimed for the customer's efforts that resulted in substantial contributions to Commission decisions are reasonable. Latino Issues Forum documented its claimed hours by presenting a daily breakdown of the hours of its attorneys and expert, accompanied by a brief description of each activity.⁶ With one minor exception the hourly breakdown reasonably supports the claim for total hours. In preparing the request for claimed hours, Latino Issues Forum waived hours Brown spent on equity issues

⁶ Latino Issues Forum separated the hours associated with travel and preparation of this compensation request and requests compensation for half of the hours for these activities at the full hourly rate.

in 2001. To be consistent, we disallow the 0.5 hours Gallardo spent on equity issues in 2001. Since we found Latino Issues Forum's efforts made a substantial contribution to the delineated decisions, we need not exclude from Latino Issues Forum's award compensation for certain issues. However, we note that Latino Issues Forum broke down its efforts by issue; had we needed to eliminate certain issues from the award, this breakdown would have facilitated the process.

Finally, in determining compensation, we take into consideration the market rates for similar services from comparably qualified persons. The rates requested by Latino Issues Forum for Brown in 2001 through 2003, Gallardo in 2002 and 2003, and Gonzales in 2001 are based upon previously approved rates by the Commission and are reasonable. The 2004 rate requested for Brown is \$390 and represents an increase based on her additional experience compared to the rate adopted in 2003. The requested increase is less than the 8% increase that Resolution ALJ-184 deemed reasonable for 2004 rates, and we adopt it here.

The 2001 and 2004 rates requested for Gallardo represent increments lower and higher than the rates we have approved for 2002 and 2003 to account for Gallardo's increasing experience practicing law. The hourly rate requested for 2001 (\$245) is the rate requested when Gallardo had been an attorney for 4 years. In D.02-11-024, we awarded a rate of \$210 for work performed in 2000 by attorney Leanne Bober who had 4 years of experience at that time. For that reason, we find that a rate of \$230 is more reasonable for Gallardo's hours in 2001 and more consistent with the market rates awarded to others with similar training and experience. The rate requested for 2004 is the same rate that was awarded to Itzel Berrio, another 1997 law school graduate, for work performed in 2003. The requested 2004 rate is reasonable.

Latino Issues Forum requests \$2,259 for photocopying, postage, and supplies. We decline to authorize compensation for \$345 for unspecified supplies. We approve \$1,914 in other costs.

Award

As set forth in the table below, we award Latino Issues Forum \$165,324.00.

Advocate	Year	Rate	Hours	Total
Susan Brown	2001	\$380.00	26.5	\$ 10,070.00
Brown	2002	\$380.00	281.5	\$106,970.00
Brown	2003	\$380.00	2.0	\$ 760.00
Brown	2004	\$390.00	7.0	\$ 2,730.00
Enrique Gallardo	2001	\$230.00	31.0	\$ 7,130.00
Gallardo	2002	\$255.00	110.5	\$ 28,177.50
Gallardo	2003	\$265.00	5.0	\$ 1,325.00
Gallardo	2004	\$275.00	7.5	\$ 2,062.00
Viola Gonzales	2002	\$310.00	13.5	\$ 4,185.00
Other Costs				\$ 1,914.00
Total				\$165,324.00

Consistent with previous Commission decisions, we will order that interest be paid on the award amount (at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15) commencing the 75th day after Latino Issues Forum filed its compensation request and continuing until full payment of the award is made.

We direct PG&E, SDG&E, and SCE to allocate payment responsibility among themselves based upon their California-jurisdictional electric revenues for the 2002 calendar year, to reflect the year in which the proceeding was primarily litigated. Mountain Utilities' request to be exempted from paying a proportionate share of the award is reasonable, since the program established in

R.01-05-047 ALJ/CFT/jva

D.04-02-057 does not apply to its customers. Similarly, we exempt all smaller electric utilities.

We remind all intervenors that Commission staff may audit their records related to this award and that intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. Latino Issues Forum's records should identify specific issues for which it requested compensation, the actual time spent by each employee, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation was claimed.

Waiver of Comment Period

This is an intervenor compensation matter. Accordingly, as provided by Rule 77.7(f)(6) of our Rules of Practice and Procedure, we waive the otherwise applicable 30-day comment period for this decision.

Assignment of Proceeding

Geoffrey F. Brown is the Assigned Commissioner. Charlotte TerKeurst is the assigned ALJ in this proceeding.

Findings of Fact

1. Latino Issues Forum made a substantial contribution to D.03-01-037 and D.04-02-057 as described herein.
2. Latino Issues Forum requested hourly rates for attorneys and experts that, as adjusted herein, are reasonable when compared to the market rates for persons with similar training and experience.
3. The total of the reasonable compensation is \$165,324.00.
4. Customers of the smaller electric utilities were not included in the program whereby lower-middle income large household participants will be charged Tier 2 electricity rates for their Tier 3 usage.

Conclusions of Law

1. Latino Issues Forum has fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation, and is entitled to intervenor compensation for its claimed compensation, as adjusted herein, incurred in making substantial contributions to D.03-01-037 and D.04-02-057.

2. Latino Issues Forum should be awarded \$165,324.00 for its contribution to D.03-01-037 and D.04-02-057.

3. Per Rule 77.7(f)(6), the comment period for this compensation decision may be waived.

4. This order should be effective today so that Latino Issues Forum may be compensated without further delay.

O R D E R

IT IS ORDERED that:

1. Latino Issues Forum is awarded \$165,324.00 as compensation for its substantial contributions to Decisions 03-01-037 and 04-02-057.

2. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company (PG&E), Southern California Edison Company (Edison), and San Diego Gas & Electric Company (SDG&E) shall each pay Latino Issues Forum the respective utility's share of Latino Issues Forum's total award. The shares shall be computed on the basis of each utility's percentage of California-jurisdictional electric revenues for the 2002 calendar year (the year most costs were incurred) for all three utilities.

3. PG&E, Edison and SDG&E shall also pay interest on the award beginning July 14, 2004, at the rate earned on prime, three-month commercial paper as reported in Federal Reserve Statistical Release H.15, and continuing until full payment is made.

4. The comment period for today's decision is waived.

This order is effective today.

Dated October 28, 2004, at San Francisco, California.

MICHAEL R. PEEVEY

President

CARL W. WOOD

LORETTA M. LYNCH

GEOFFREY F. BROWN

SUSAN P. KENNEDY

Commissioners

Compensation Decision Summary Information

Compensation Decision:	D0410032
Contribution Decision(s):	D0301037/D0402057
Proceeding(s):	R0105047
Author:	ALJ TerKeurst
Payer(s):	Pacific Gas and Electric Company; Southern California Edison Company; San Diego Gas & Electric Company

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
Latino Issues Forum	4/30/04	\$166,255.00	\$165,324.00	No	Undocumented costs; failure to justify hourly rate

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Susan	Brown	Attorney	Latino Issues Forum	\$380	2001	\$380
Susan	Brown	Attorney	Latino Issues Forum	\$380	2002	\$380
Susan	Brown	Attorney	Latino Issues Forum	\$380	2003	\$380
Susan	Brown	Attorney	Latino Issues Forum	\$390	2004	\$390
Enrique	Gallardo	Attorney	Latino Issues Forum	\$245	2001	\$230
Enrique	Gallardo	Attorney	Latino Issues Forum	\$255	2002	\$255
Enrique	Gallardo	Attorney	Latino Issues Forum	\$265	2003	\$265
Enrique	Gallardo	Attorney	Latino Issues Forum	\$275	2004	\$275
Viola	Gonzales	Policy Expert	Latino Issues Forum	\$310	2002	\$310